

As requested in the amendment filed 8/8/02, applicants would appreciate written acknowledgement by the Office that the copy of the priority document already on file is adequate.


Applicants acknowledge the Office's indication that the Section 112 second paragraph rejections are or would be overcome by the 8/8/02 response. With respect to the Section 112 first paragraph rejection, the Office seems to be saying that the application is enabled for phytosterols but not sterols generally. However, claim 1 was previously amended to recite phytosterols. Therefore, it would appear that the claim is adequately enabled consistent with the statements of the Office. In addition, the specification acknowledges that phytosterols were known for cholesterol lowering. See second paragraph on page 1 of the specification. Preferred phytosterols are mentioned in the first full paragraph of page 10. It is submitted that one of ordinary skill would well be able to select suitable compounds without undue experimentation.

As to the Section 103 rejection, it is submitted that the Office is using applicants' disclosure as a roadmap to pick and choose from among prior art references in fashioning its rejection. Tempting as this is for anyone who is trying to make an obviousness determination, applicants contend that this employs proscribed hindsight.

Applicants invented the concept of combining amounts of phytosterol and carotenoid to avoid the reported problem of carotenoid depletion. With that knowledge, the Office selects a recipe which includes carrots and butter. The Office then selects a margarine which includes phytosterol and asserts that one of ordinary skill would have substituted the margarine for the butter, without pointing out any suggestion in the art to combine the carotenoid containing ingredient with a phytosterol containing ingredient. While this specific and particular combination seems like a good idea with knowledge of applicants' invention, applicants' invention must be temporarily forgotten in formulating the rejection. Absent applicants' invention, one of ordinary skill would not be likely to select the phytosterol-containing margarine to put on Joy of Cooking's carrots.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,

  
\_\_\_\_\_  
Gerard J. McGowan, Jr.  
Attorney for Applicant  
Registration No. 29,412

GJM/  
(201) 840-2297